IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2235 OF 2005

Punamchand Khanderao Varute, Room No.206, Jay Bhavani Apartment, Bhavani Chowk, Pathare Park, B-Cabin Road, Ambarnath (E), Dist: Thane. ... Petitioner

Versus.

1. Dy.Director of Education, Greater Mumbai, Secondary, Jawahar Bal Bhavan, N.S.Road, Charni Road, Mumbai.

2. Education Inspector (North Zone) 39, New Administrative Bldg., 2nd floor, Ram Krishna Chemburkar Marg, Chembur, Mumbai.

3. Dr.Bhimrao Ambedkar Vidyalaya, through its Head Master, Naga Baba Nagar, Vashi Naka, Chembur, Mumbai 400 074.

4. Samajik Shaikshanik Utkarsha Mandal, through its Secretary, having their office at Dr. Bhimrao Ambedkar Vidyalaya, Naga Baba Nagar, Vashi Naka, Chembur,Mumbai 400 074.

5. State of Maharashtra. ... Respondents.

Shri Sunil Dighe for the Petitioner.

Shri D.T.Sathalekar, A.G.P. for respondents 1, 2 & 5.

CORAM : SMT.RANJANA DESAI & ABHAY S. OKA, JJ.

Date on which argument concluded. : 1st December, 2005.

Date on which judgment pronounced. : 22nd December, 2005.

JUDGMENT.: (Per Abhay S.Oka, J.)

1. Rule. The learned A.G.P. waives service for the Respondents Nos.1, 2 and 5. The Respondent No.3 is the School run by the Respondent No.4-Trust. Shri Ramesh Sitaram Kamble, Secretary of Respondent No.4, has filed an affidavit-in-reply and it is reflected from the said affidavit that the Respondents Nos.3 and 4 have submitted to the orders of this Court. Considering the facts and circumstances of the case, we have taken up the petition for final hearing forthwith.

2. By this petition under Article 226 of the Constitution of India, the Petitioner is praying for quashing the order dated 17th March 2005 passed by the Deputy Director of Education and for a consequential direction to the Respondents Nos.1 and 2 to grant approval for the post of the Petitioner as Assistant Teacher in Respondent No.3-School either from the date of his initial appointment on 25th September 1997 or from the year 2001 and further directing the Respondents Nos.2, 3 and 4 to pay the Petitioner his monthly salary regularly and arrears of his salary with effect from 25th September 1997 as per the relevant pay-scale.

3. With a view to appreciate submissions made by the Counsel appearing for the parties, it will be necessary to refer to the facts of the case in brief.

The Petitioner holds B.A., B.Ed.(Physical) degrees. The Petitioner belongs to OBC category. On 25th September 1997 the Petitioner was appointed as an Assistant Teacher in the Respondent No.3-School from 18th September 1997. The Petitioner was appointed for a period of two years on probation. The employment of the Petitioner was confirmed and by communication dated 18th September 1999, the Petitioner was informed that he was being made permanent with effect from 18th September 1999. It appears that on 8th September 2003, the Headmaster of the Respondent No.3-School submitted a proposal to the Education Inspector, North Zone, Chembur, Mumbai for grant of approval to the appointment of the Petitioner. In the letter it is recorded that the Petitioner was working with effect from 18th September 1997 and as the earlier Headmaster Shri Bajirao Lokhande (who was later on placed under suspension) deliberately avoided to submit the proposal of the Petitioner for approval, there was a delay in submitting the proposal. It appears that by communication dated 17th October 2003, the Education Officer, North Division, Mumbai communicated to the Headmaster of the Respondent No.3 that the approval cannot be granted to the Petitioner from 18th September 1997 with retrospective effect and therefore, the proposal was disapproved. Being aggrieved by the said order, the Petitioner filed Writ Petition No.2015 of 2004. To the said petition, the Deputy Education

Officer filed a reply opposing the petition. The opposition was on the ground that the proposal was sent on 17th October 2003 and the approval cannot be granted retrospectively. The second ground was that in view of the Government Resolution dated 17th January 2001, the approval cannot be granted to the Petitioner who was appointed on the post of Assistant Teacher in trained undergraduate category for standards V to VIII and the Petitioner was trained Graduate Teacher. The third reason given was that there was only one post available for teacher in physical education in the school which was filled in by appointing one Shri P.N.Vani and the approval has been granted to his appointment in the year 2001. On 30th February 2005, the said writ petition was disposed of by permitting the Petitioner to file a representation to the Deputy Director of Education and by directing the Deputy Director to decide the said representation. Accordingly, the Petitioner submitted a representation which was decided by the Deputy Director of Education by order dated 17th March 2005 which is impugned in this petition. By the said order, the Deputy Director came to the conclusion that the approval cannot be granted to the Petitioner as (i) the post of teacher in the physical education was not vacant; (ii) a trained graduate teacher cannot be appointed on the post of a trained non-graduate teacher under the Government Circular dated 17th January 2001; and (iii) though there is one vacant post in the trained

non-graduate cadre in the school, the appointment of the Petitioner cannot be approved in view of the Government Circular. It appears that reliance was placed by the Petitioner before the Deputy Director of Education on the decision dated 6th May 2004 of this Court in Writ Petition No.4632 of 1999. The Deputy Director observed that the State Government had challenged the said decision by preferring an Appeal in the Apex Court and therefore, no reliance can be placed on the same.

4. The learned Counsel appearing for the Petitioner assailed the impugned order by pointing out that the Deputy Director has completely misread the Government Circular dated 17th January 2001. He submitted that the said Circular itself provides that though the educational qualification for teachers of primary schools is D.Ed., in view of the decision of this Court in Writ Petition No.4158 of 1998, out of the post of teachers approved for standards V to VII in private secondary schools, 75% posts are to be filled in by candidates who are non-graduate trained teachers and 25% posts are to be filled in by the candidates who are graduate trained teachers holding B.A./B.Com./B.Sc. degrees along with B.Ed. degree. He also placed reliance on the Circular dated 1st February 2001 issued by the State Government and submitted that the Petitioner will have to be treated as a trained graduate teacher. The learned Counsel for the Petitioner placed

reliance on an unreported decision of this Court dated 6th May 2004 in Writ Petition No.4632 of 1999 along with other connected petitions. The learned Counsel also placed reliance on an another decision of this Court reported in 2002 (9) LJSOFT (URC) 4 (Kondiba s/o.Dattarao Mirashe v/s. State of Maharashtra & ors.).

5. The leaned A.G.P. submitted that the Deputy Director of Education has considered the representation and has passed a speaking order. He submitted that the Petitioner is holding decree of B.Ed. (Physical) and only one available post of Teacher in physical education has been filled in the year 1994 by a candidate who has been granted approval in the year 2001. He submitted that in view of the Government Circular dated 17th January 2001 the Petitioner cannot be appointed in the vacant post of trained non-graduate teacher. The same is the stand taken in the affidavit-in-reply filed by the Education Inspector, North Zone, Greater Mumbai. The Secretary of the Respondent No.4 Shri Ramesh Sitaram Kamble stated in his reply, inter-alia, that the Respondent No.3 is a fully aided school and it is not possible to continue a teacher unless his appointment is approved by the Respondent No.2 and therefore, it is submitted that necessary orders may be passed by this Court. In the said affidavit, it is admitted that there is a clear vacancy for one teacher in trained non-graduate scale and the proposal of the Petitioner

was sent for the post of trained non-graduate scale. It is also stated in the affidavit that due to the mistake, the proposal of the Petitioner was not sent in the year 2001 when the school started receiving grand-in-aid. It is pointed out that the proposal of the Petitioner was not sent at that time due to inadvertence though the proposal as regards the other teachers was submitted.

6. We have considered the submissions. In the earlier petition filed by the Petitioner the opposition by the Education Department was on various grounds. While deciding the representation filed by the Petitioner in terms of the order passed in the earlier petition, the Deputy Director has held that the approval cannot be granted to the Petitioner on the following three grounds:

i) The educational qualification of the Petitioner is B.A.,B.Ed.(Physical) and the post of teacher in physical education is not vacant.

ii) The trained graduate teacher cannot be appointed on the post of trained non-graduate in view of the Circular dated 17th January 2001 and therefore, the appointment of the Petitioner cannot be approved for the vacant post of

trained non-graduate.

iii) Reliance cannot be placed on the decision of this Court in Writ Petition No.4632 of 1999 in view of the fact that Special Leave Petition has been filed by the State Government against the said decision in the Supreme Court.

Therefore we will have to consider whether the rejection of the representation of the Petitioner was justified on the said three grounds which are mentioned above.

7. So far as the third ground mentioned above is concerned, the learned A.G.P. fairly stated that no interim relief has been granted in the Special Leave Petition by the Apex court. Thus the decision of this Court dated 6th May 2004 is still operative. Therefore, the representation could not have been rejected on the ground of pendency of the Special Leave Petition.

8. It will be necessary to refer to the Government Resolution dated 17th January 2001 on the basis of which the representation has been rejected. The English translation of the second paragraph of the said Circular reads thus:

"Taking into consideration the order of the

> Hon'ble High Court, in private secondary schools, out of sanctioned posts for standard V to VII, 75% posts shall be filled in by the candidates having qualification of SSC/HSC and D.Ed. and 25% posts shall be filled in by graduate trained teachers".

Thus the circular provides that out of the sanctioned posts of teachers for the standards V to VII in private secondary schools, 25% posts shall be filled in by candidates possessing qualification of B.A./B.Com./B.Sc. plus B.Ed. degree. Thus the said circular itself permits appointment of graduate trained teachers to the 25% posts out of the posts which are meant for non-graduate trained teachers. It is thus obvious that the Deputy Director of Education has completely misread the Circular dated 17th January 2001. It will be necessary to refer to the relevant portion of the decision of this Court in the case of Kondiba (supra). The relevant portion of paragraphs 7 and 8 reads thus:

> 7. .....By the Government Resolution dated 14.11.1979, the Government had decided to remove the anomaly and, therefore, prescribed a common policy relating to the facilities and staffing pattern provided to the classes of 5th to 7th standards attached to the secondary schools as well as to the primary schools run by

the local self Government . More so, there was a difference in the staffing pattern. In order to bring parity, it was decided that in respect of 5th to 7th standards, teachers should be sanctioned in the ratio of 1.3 per class. It was also resolved that out of every 4 sanctioned teachers, 1st 3 teachers should possess educational qualifications of S.S.C. & D.Ed. and the 4th teacher should be a Graduate with B.Ed/D.Ed. Accordingly, 25% of the posts of teachers for 5th to 7th standards were converted from S.S.C. + D.Ed. to Graduate + B.Ed./D.Ed. and they were given higher pay scale in two stages. It is admitted that the petitioner is employed in Sangamwadi Primary School which has classes from 1st to 7th standards and, therefore, he would be governed by the policy laid down by the State Government vide Government Resolution dated 14.11.1979 and subsequently followed all along in respect of the schools run by the Municipal Councils.

8. Consequent to the decision of a Full Bench of this Court in the case of Jayashree Sunil Chavan vs. State of Maharashtra and others, reported in 2000 (3) Mh.L.J. 605 = 2000 (9) LJSOFT 99, the Government issued the Resolutions dated 25th October 2000 as well as

> 7th November 2001, by directing that the trained Graduates appointed for the classes between 5th and 7th standards ought to possess the D.Ed. qualifications instead of B.Ed. degree. In fact, this decision of the Full Bench did not overrule the scheme of the State Government to appoint trained Graduate teachers for the classes between 5th to 7th standards and it only dealt with the qualifications required for a trained teacher in the primary schools."

In the decision of this Court in Writ Petition No.4632 of 2001 and other connected matters (Tukaram Tryambak Chaudhari v/s. State of Maharashtra) a Division Bench of this Court in paragraph 4 held thus:

> "4. Considering the above we are of the opinion that in Schools having standards 1 to 7 it is permissible to appoint one teacher having B.Ed./B.Sc. in terms of the Government Circular as now interpreted by this Court. Considering that all such teacher who were appointed and who possess graduate qualification with B.A., B.Sc., and also B.Ed. are entitled to be treated as trained teachers and will be continued to be paid salary as trained teachers. In the light of that the various orders issued directing that the teachers be paid in the untrained pay scale

are set aside."

9. It is an admitted position that one post of non-graduate trained teacher is vacant in the school. The other question arises for consideration is whether the Petitioner could have been appointed as only one available post of teacher in physical education is already filled in. In this connection the Petitioner has relied upon the Government Resolution dated 1st June 2000. In the said Resolution there is a recital that from the yea,r 1973 B.Ed. Physical courses in all Universities in the State are bifocal courses and in the said course apart from physical education one additional subject has been included and therefore, a person holding B.Ed.(Physical) Degree has to undergo training in the said degree course in one more school subject apart from physical education. By the said Government Resolution, the State Government decided that if a teacher holding B.Ed.(physical) degree is appointed as a graduate teacher in a primary school such teacher will be exempted from the requirement of passing B.Ed. degree provided he has obtained B.Ed.(Physical) degree by undergoing training in physical education as well as one other subject on the curriculum of the School. In the present case it is not in dispute that the Petitioner has obtained B.Ed.(Physical) degree after 1973. The said G.R. itself records that after 1973 B.Ed. Physical course was bifocal which included

physical education as well as one of the other subject of the curriculum of the school. It is thus obvious that the Petitioner who was appointed as graduate teacher for 5th to 7th standard was qualified to be appointed as the Petitioner is on par with a teacher holding B.Ed. degree.

10. It is pertinent to note that in the impugned order the Petitioner has been denied benefit not on the ground that there is no vacancy but on the ground that there is no vacancy of teacher in physical education. The teacher in physical education was appointed in the year 1994 and in the year 1997 the Petitioner was appointed as a graduate trained teacher and such appointment is obviously legal in view of the said Government Resolution dated 1st June 2000 as on the date of issuance of the said G.R. the Petitioner was already in service. The impugned order itself records that there is one vacant post of trained non-graduate category. In view of the Government Circular dated 17th January 2001, the appointment of the Petitioner cannot be faulted with as 25% of the posts can always be filled in by trained graduate teachers. Thus on all counts, the impugned order is unsustainable.

11. Thus, approval deserves to be granted to the appointment of the Petitioner in the post of Assistant Teacher with effect from 18th September 1997. It must

be noted here that the management submitted a proposal for approval to the appointment of the Petitioner for the first time on 8th September 2003. The said proposal was for approval as trained under-graduate. A Division Bench of this Court by order dated 30th February 2005 passed in Writ Petition No.2015 of 2004 directed the Deputy Director of Education to decide the comprehensive representation which may be made by the Petitioner. By the said representation a contention was raised that she can be appointed even on the 75/25 per cent ratio. In the impugned order passed by the Deputy Director of Education while recording the finding observed that a trained graduate teacher cannot be appointed on the post of a trained non-graduate under Government Circular dated 17th January 2001. Thus the Deputy Director has not held that the Petitioner is not entitled to approval even considering the ratio of 75/25 percent. But the denial of the approval is on the ground of the Government Circular dated 17th January 2001 with which we have already dealt with earlier. In our view the Education Department ought to have granted approval to the appointment of the Petitioner in terms of the proposal dated 8th September 2003 (Exh.D to the petition).

12. The other question which remains is whether the Petitioner is entitled to the arrears of salary, if any, as per the prescribed pay scale and if he is entitled to

arrears, from what date the arrears should be allowed. The Petitioner himself has stated that till the year 2001 the School in question was not an aided School. Though the proposal of the Petitioner was not submitted from 1997 till 2003, the Petitioner had not made any grievance. Therefore, in our view the Petitioner is entitled to arrears of salary, if any, in accordance with the prescribed pay scale with effect from 8th September 2003.

12. Hence we pass the following order:

(i) The impugned order dated 17th March 2005 is quashed and set aside.

(ii) We direct the Respondents Nos.1 and 2 to grant approval to the Petitioner in terms of proposal dated 8th September 2003 submitted by the Respondents Nos.3 and 4 with effect from 18th September 1997.

(iii) We direct that all consequential benefits shall be conferred on the Petitioner. We, however, clarify that the Petitioner will be entitled to arrears of pay as per the prescribed pay-scale with effect from 8th September 2003. The arrears, if any, shall be paid to the Petitioner within a period of six

months from today.

(iv) We make it clear that this order will not affect the pay and approval granted to any other teacher in the Respondent No.3-School.

(v) Rule is accordingly made absolute with no order as to costs.

(vi) Parties to act on an authenticated copy of this order.

(Smt.Ranjana Desai, J.)

(Abhay S.Oka, J.)